

WETLANDS COUNCIL

MINUTES

May 14, 2019

The Wetlands Council met on Tuesday, May 14, 2019 in Rooms 112, 113, 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matthew Bosiak, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Wendy Weisiger and Gretchen Young

Absentee: Councilors: Lee Carbonneau, Carol Henderson, Jim Gove and Michael Klass

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeal Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:06 a.m. with introductions and a quorum present.

Councilor Weisiger arrived at 8:08.

Commissioner Scott gave a report on the Wetlands Rules that were presented to JLCAR. With minor changes, final approval should be given this coming Friday, May 17th. Education, outreach, and best management practices must now be worked on.

Last Friday, in front of joint Fiscal Committee, the Wetlands Audit was reported out. It is now a public document. Much of the audit concerned the rules. There is now a new management team within the Land Resources Management Bureau. The last issue seems to be the past audit issues. A corrective action plan will be submitted June 14th. It will take multi years to complete. Future points of issue: 1) June 14th presentation corrective action plan; 2) the joint legislative oversight committee over the auditors for where to go next.

Chairman Kimball still has a question, that has been referred to our counsel, as to whether the Council is an 'agency' or not in the Executive Order (2014-03 as Amended by 2016-08:Audit Responses).

Commissioner Scott noted the wetlands fees bill is now in the Senate. Perhaps it may be rolled into House Bill 2.

Thomas O'Donovan, Sarah Yuhas-Kirn and Collis Adams then joined the Commissioner to discuss rules and the audit. Tom noted there was a major challenge to linking Wetland rules with other rules, some of which are expired. There was a hard push to include the forms in the rules. The rules will have a five year schedule to continue to clarify, simplify, and be rewritten. Sarah distributed the Corrective Action Plan. Tom reviewed the basics of the plan. Sarah began with a charter that assigns resources and establishes the structure of how to go about the corrective actions. There is a team established that reports to an executive committee. An adaptive management approach is being taken. There were 60 observations in the audit with the tracking of 276 recommendations. They will be able to show what has been done. DES now has an internal auditor who will be reviewing all the documentation. Completing the 2007 audit is also part of this plan.

Tom addressed the timeline, it is multi-year timeframe. It is possible the audit could open a basis for new appeals. In the last 8 years the bureau has brought review time from 120 days down to 50 days. The AGs office has been asked to define what the law requires in balancing transparency in rule to do and not to do.

Questions were addressed from the Council.

Collis addressed

- Staffing – Gino Infascelli has retired. This position cannot be filled until late summer so existing staff must absorb his workload. Staffing level is otherwise good.
- Budget – HB 682 still going forward
- Working on dock regulations, registration to set up program. State of Oregon model is being looked at.

Also working on joint process applications that are between wetlands and shorelands. Working on forms, modifying over 100, is now a large piece of the work. Education and outreach are going to be very important and a large piece of work in the future.

Questions were addressed.

1. **Approval of Minutes**

- ***Councilor Prescott made a motion to approve the April 9, 2019 meeting minutes as corrected and the hearing minutes, second by Councilor Lievens. Motion passed unanimously.***

2. **Public Input:** None

3. **Status of Appeals**
Paula Scott, Appeals Clerk

I. New Appeals

II. Decisions that need to be written/finalized and issued.

III. Hearings or PHCs Pending

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: October 17, 2017 David Conley appointed by AG.

Status: July 14, 2017 received Petition for Appeal. December 7, 2018 issued Pre-hearing Order scheduling hearing for April 9, 2019 at 9 a.m. January 7, 2019 received Motion to Compel. 1/17/19 issued letter granting Motion to Compel. February 22, 2019 received Appearance of Joshua Harrison for the Department. March 8, 2019 received Appellant's Witness and Exhibit List and a Motion to Continue and to Provide Information. 3/8/19 received State's Witness and Exhibit List. 3/12/19 received Permittee's witness and Exhibit List. 3/13/19 received Permittees Objection and Response to Appellant's Motion to Continue and Provide Information. 3/18/19 issued Ruling Granting in part and denying in part, Appellant's Motion to Continue and Provide Information. 3/18/19 received Objection to Permittee's Witness and Exhibit List. April 3, 2019 issued Ruling regarding Objection to Permittee's Witness and Exhibit List. 4/4/19 received Permittee's Objection and Petition for Reconsideration. 4/5/19 issued Ruling denying Permittee's Objection and Petition for Reconsideration. 4/9/19 Hearing and Deliberations were held. Order to be issued. 4/23/19 distributed Final Draft Order on Revised Petition for comments from the Council.

- ***Councilor St. Pierre made a motion to adopt the Order as drafted, second by Councilor Mellor. Motion passed unanimously.***

Docket No. 18-13 WtC – William R. Davis Appeal

Subject: 9/5/18 Approval of Wetlands Permit #2018-01848 issued to Kimberly A. Wesson Revocable Trust
Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: October 5, 2018 received Petition for Appeal. 10/9/18 issued Insufficient Appeal letter. November 8, 2018 received Supplemental to Petition for Appeal. 11/9/18 issued Receipt of Revised Appeal letter. Council to accept or dismiss Appeal at today's meeting. Discussion was held. Motion to Deny was passed on 12/11/18. 12/12/18 issued Ruling denying Acceptance of Appeal. January 11, 2019 received Motion for Reconsideration. Discussion was held. February 12, 2019 Council granted Motion for Reconsideration. 2/14/19 issued ruling granting Motion for Reconsideration. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 9 a.m. March 18, 2019 issued Pre-hearing Order scheduling hearing for June 11, 2019 at 9 a.m.

Docket No. 18-14 WtC – Kathleen McDonald Appeal

Subject: 9/17/18 Approval of Wetlands Permit #2017-00818 issued to Regina Gordon Revocable Trust
Hearing Officer: January 11, 2019 David Conley was appointed by AG.

Recused: Councilor Gove

Status: October 12, 2018 received Petition for Appeal. 10/15/18 issued Insufficient Appeal letter. 11/14/18 received Revised Petition for Appeal. November 19, 2018 issued Receipt of Revised Appeal. December 4, 2018 received Appearance of Patricia Paniciocco for permittee. Motion to Intervene and Motion requesting Summary Dismissed. January 4, 2019 received addition to Appeal. Council was made aware of a date discrepancy. Council accepted appeal and denied Motion for Summary Dismissal on January 8, 2019. 1/11/19 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/11/19 received Objection to Letter Request by McDonald to Supplement the Appeal record. 1/17/19 issued Notice of Pre-hearing Conference scheduled for February 22nd at 9 a.m. 2/22/19 issued Pre-hearing Order scheduling Hearing for May 14, 2019 at 9 a.m. 4/17/19 received Motion to Compel. 4/25/19 received Permittee's Witness List. 4/30/19 issued letter ruling granting Motion to Compel. 4/30/19 received Response to Appellant's Objection to Motion to Compel. May 2, 2019 received Intervenor's Amended Witness List.

Docket No. 18-15 WtC – Nancy Hall and Edward Benway, Trustee Appeal

Subject: 9/18/18 Administrative Order No. 18-015 WD

Hearing Officer: December 17, 2018 David Conley was appointed by AG

Status: October 18, 2018 received Petition for Appeal. 10/19/18 issued Receipt of Appeal Letter. Council to accept or dismiss Appeal at today's meeting. Appeal was accepted on December 11, 2018. 12/12/18 issued Appeal Accepted letter. January 4, 2019 issued Notice of Pre-hearing Conference scheduled for January 28, 2019 at 1 p.m. 1/18/19 received Motion to Continue Pre-hearing Conference. 1/23/19 received Appearance from Collis Adams and issued Letter granting Motion to Continue PHC rescheduling it for May 6, 2019 at 10 a.m. May 1, 2019 received Assented-to Motion to Continue Pre-hearing Conference. 5/2/19 issued ruling granting Assented-to Motion to Continue Pre-Hearing Conference and rescheduled it to June 10th at 8:30 a.m.

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 amendment to Administrative Order No. 18-020 WD

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: January 11, 2019 received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. Council to accept or dismiss Appeal in today's meeting (2/12/19). Council voted to accept the Appeal on February 12, 2019. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 10 a.m. 2/26/19 received Appearance from Atty. Reimers. 3/1/19 received Appearance from Atty. Aslin. 3/11/19 received Petition to Intervene. 3/18/19 issued Pre-hearing Order granting Motion to Intervene and scheduling a second Pre-hearing Conference for May 8, 2019 at 8 a.m. April 12, 2019 issued Notice of Rescheduled Pre-hearing Conference for June 11, 2019 at 8 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 1/04/19 received Appellant's Motion for Reconsideration of December 7, 2018 Order. 1/8/19 received Appearance of Christopher Aslin for the Department and received the Department's Witness and Exhibit List. 1/9/19 received Permittee's Witness and Exhibit List. 1/11/19 received Objection to Appellant's Motion for Reconsideration. 1/14/19 received Assented-to-Motion for Extension to Close Record for Filing Requests. 1/15/19 received Permittee's Motion to Exclude. 1/17/19 issued Notice of Pretrial Hearing on Applicant's Motion for Summary Judgment and Appellant's Objection and Cross Motion for Summary Judgment to be held on 1/22/19 at 11 a.m. in room 110. 1/17/19 received Appellant's Objection to Applicant's Motion to Exclude. 1/18/19 issued ruling denying Motion to Exclude. 1/23/19 issued rulings on Motions remanding Appeal to the Department for purposes of soliciting additional public comment. February 12, 2019 received Appellant's Motion for Reconsideration. 2/19/19 received Objection to Appellant's Motion for Reconsideration. 2/19/19 received DES' Objection to Appellant's Motion for Reconsideration. 2/22/19 issued letter ruling denying Motion for Reconsideration.

5. **Old Business**

Chairman Kimball shared the Letter of Addendum to the Auditor was presented at May 10th meeting. The revised letter head was discussed and will be used for the agendas.

6. **Next Meeting** –

The next meeting is June 11, 2019 at 8 a.m. with a hearing after at 9 a.m.

7. **Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Bosiak. Motion passed unanimously.***

Meeting adjourned at 8:59 a.m.

WETLANDS COUNCIL

HEARING MINUTES

May 14, 2019

The Wetlands Council met for
Docket No. 18-14 WtC – Kathleen McDonald Appeal Hearing
Tuesday, May 14, 2019 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matt Bosiak, Deb Lievens, Richard Mellor, Wendy Weisiger, Gretchen Young, Seth Prescott, and Russ St. Pierre

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:10 a.m.

The Hearing record was closed at 3:40 p.m.

Deliberations were called to order at 3:41 p.m. and ended at 4:10 p.m.

Council voted to Deny the Appeal.